

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

James Whetstone

§

Plaintiff,

§

v.

§

Civil Action No. _____

Tyson Foods, Inc.

§

Defendants.

§

JURY TRIAL DEMANDED

PLAINTIFF'S ORIGINAL COMPLAINT FOR DAMAGES

Plaintiff James Whetstone ("Plaintiff") brings this action complaining of Tyson Foods, Inc. ("Defendant"), and for cause of action would respectfully show the Court the following:

I.

NATURE OF ACTION

1. This is a personal injury case against a nonsubscriber to a Workers Compensation insurance policy. Because Defendants are nonsubscribers, they may not argue that Plaintiff has any responsibility for his injuries. TEX. LAB. CODE § 406.033(a).
2. Plaintiff brings claims of negligence, gross negligence, and negligence per se against Defendant.

II.

JURISDICTION AND VENUE

3. The Court has diversity jurisdiction over this action under 28 U.S.C. § 1332, as all parties are citizens of different states, and Plaintiffs seeks damages in excess of \$75,000. The Court has personal jurisdiction over Defendant because Defendant does a substantial amount of business in Texas, and committed the acts complained of in Texas.
4. Venue is proper in the Eastern District of Texas because Defendant resides within

this district.

III.
DISCOVERY LEVEL

5. Discovery in this matter may be conducted according to the Federal Rules of Civil Procedure.

IV.
PARTIES

6. Plaintiff James Whetstone (“Mr. Whetstone”) is a citizen and resident of Texas.

7. Defendant Tyson Foods, Inc. is a foreign corporation which does substantial business in Texas and committed a tort in Texas. It is a citizen of Arkansas and Delaware. It may be served with process through its registered agent, United Agent Group, Inc., at its registered office, 5444 Westheimer Road, Unit 1000, Houston, Texas 77056.

V.
FACTS

8. This lawsuit is necessary as a result of severe personal injuries suffered by Mr. James Whetstone on or about November 30, 2024. On or about the date of the incident, Mr. Whetstone was working for Defendant Tyson Foods, Inc. at Defendant’s plant located at 4700 US-75, Sherman, Texas and was tasked with stacking Defendant’s meat products on a pallet for shipment out of the facility. The meat products were packed in bins that could vary significantly in weight, and could range between 5 and 80 pounds. Despite this, the bins were not marked with stickers or sufficient visual warnings to show employees how heavy each was. Furthermore, Defendant did not schedule sufficient employees to complete the tasks that Mr. Whetstone was required to complete, particularly given the quotas employees like Mr. Whetstone were required to meet.

9. On the date of the incident, Mr. Whetstone was working in the course and scope of his employment with Defendant. As a result of the foregoing acts and/or omissions by Defendant, Mr. Whetstone was forced to lift a bin that was too heavy, causing him to suffer severe injuries to his back and other parts of his body, including multiple herniated disks.

10. Defendants are negligent, negligent *per se*, and grossly negligent for the following reasons:

- a. failing to provide a reasonably safe workplace;
- b. negligently instructing Mr. Whetstone to work in an unsafe manner;
- c. failing to provide Mr. Whetstone with adequate assistance in performing his job functions;
- d. failing to properly mark its products with sufficient warnings;
- e. failing to ensure its stores were sufficiently staffed such that work could be performed in a safe manner;
- f. vicariously liable for their employees' negligence;
- g. knowingly disregarding inherent dangers;
- h. failing to take adequate precautionary measures;
- i. recklessly disregarding the safety of Plaintiff;
- j. ratifying the grossly negligent acts of its employees;
- k. failing to implement adequate safety policies and procedures;
- l. failing to follow, enforce, or train its employees regarding its own policies and procedures;
- m. failing to follow applicable government safety regulations; and
- n. other acts deemed negligent and grossly negligent.

11. As a result of said occurrences, Mr. Whetstone sustained severe injuries to his neck, back, right leg, and other parts of his body which have resulted in physical pain, mental anguish,

and other medical problems. Plaintiff has sustained severe pain, physical impairment, discomfort, mental anguish, and distress in the past. In all reasonable probability, his physical pain, physical impairment, and mental anguish will continue indefinitely into the future. Plaintiff has also suffered a loss of earnings in the past, as well as a loss of future earning capacity. Plaintiff has incurred and will incur pharmaceutical and medical expenses in connection with his injuries.

12. Further, Defendants acted knowingly and/or recklessly, committing gross negligence. By instructing Mr. Whetstone to repeatedly lift heavy bins of meat without assistance, without properly marking the bins regarding their weight, while enforcing unsafe quotas and requiring Mr. Whetstone and other employees to rush in their tasks, and/or ratifying the gross negligence of its employees, Defendants consciously disregarded a known risk of substantial harm to Plaintiff. Accordingly, Plaintiff is entitled to punitive damages.

13. Plaintiff has been damaged in a sum far in excess of the minimum jurisdictional limits of this Honorable Court, for which he now sues. Plaintiff seeks monetary relief in excess of \$1 million.

VI.
JURY TRIAL

14. Plaintiff hereby demands a trial by jury on all claims.

VII.
PRAYER

Plaintiff prays that citation issue and be served upon Defendant in a form and manner prescribed by law, requiring that Defendant appear and answer, and that upon final hearing, Plaintiffs have judgment against any and all Defendants, both jointly and severally, in a total sum in excess of the minimum jurisdictional limits of this Court, plus pre-judgment and post-judgment

interests, all costs of Court, attorneys' fees, punitive damages, and all such other and further relief, to which they may show themselves justly entitled.

DATED: April 10, 2025

Respectfully submitted,

ARNOLD & ITKIN, LLP

/s/ *Trent Shelton*

Jason A. Itkin
State Bar No. 24032461
Trenton A. Shelton
State Bar No. 24121119
Wesley C. Hook
State Bar No. 24138435
6009 Memorial Drive
Houston, Texas 77007
Telephone: (713) 222-3800
Facsimile: (713) 222-3850
jitkin@arnolditkin.com
tshelton@arnolditkin.com
whook@arnolditkin.com
trentteam@arnolditkin.com
e-service@arnolditkin.com

ATTORNEYS FOR PLAINTIFF